

\$~20.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 422/2019 and CM APPL. 29196-97/2019

TANGIRALA SRINIVASA GANGADHARA BALADITYA

..... Appellant

Through: Mr. R.K. Sarma and Mr. P.V.R. Rao,
Advocates

versus

SANJAY AGGARWAL, SOLE ARBITRATOR & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **03.07.2019**

1. The appellant has challenged an order dated 22.05.2019 passed by the learned Single Judge, dismissing a writ petition filed by him praying *inter alia* for setting aside an order dated 08.04.2019, passed by the respondent No.1/Sole Arbitrator, turning down an application moved by him under Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A&C Act') in the arbitration proceedings initiated by the respondent No.2/company against him and one Shri Chandra Shekhar Varanasi and holding that the said proceedings are maintainable against him. Vide order dated 22.05.2019, the appellant's petition has been dismissed on twin grounds; firstly that even if his application under Section 16 of the A&C Act stood rejected by the Sole Arbitrator, he would have to wait for an
LPA 422/2019

Page 1 of 7

award to be made and could only thereafter invoke the provisions of Section 34 of the A&C Act and secondly, that a writ petition does not lie in respect of arbitral proceedings, as contemplated in Section 5 of the A&C Act.

2. In the instant case, the appellant had appeared before the learned Sole Arbitrator/respondent No.1 and moved an application under Section 16 of the A&C Act stating *inter alia* that he is not a party to the Loan Agreement executed between the respondent No.2/Company and one Shri Chandra Shekhar Varanasi, who had taken a loan from the respondent No.2/Company for purchasing a BMW car and therefore, the arbitration proceedings were not maintainable against him. The said application was contested by the respondent No.2/Company, who stated that the appellant having stood as a guarantor in the Loan Agreement and having executed a Deed of Guarantee dated 15.09.2016 in respect of the Loan Agreement, had rightly been impleaded as a co-respondent in the claim petition. After hearing the parties and examining the documents submitted by both sides, the learned Sole Arbitrator passed an order dated 8.4.2019, dismissing the application moved by the appellant and proceeded further in the matter.

3. Learned counsel for the appellant has argued that Section 5 of the A&C Act is not a bar on the High Court to invoke the extra ordinary powers vested in it under Articles 226 and 227 of the Constitution of India. In support of the said submission, he has cited Smt. Lila Vati Bai vs. State of Bombay reported as **AIR 1957 SC 521**. To urge that the order dated 08.04.2019 passed by the Sole Arbitrator, rejecting the appellant's application under Section 16 of the A&C Act is unsustainable, learned counsel has referred to a decision of the Supreme Court in S.N. Prasad vs.

M/s Monnet Finance Ltd.& Ors. reported as **AIR 2011 SC 442**.

4. We may note that Section 16 falls under Chapter IV of the A&C Act that deals with the jurisdiction of Arbitral. The said provision prescribes that the Tribunal is competent to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Sub-section (5) of Section 16 requires the Arbitral Tribunal to decide on a plea that it does not have the jurisdiction or it is exceeding the scope of its authority and after taking a decision, turning down such a plea, the said provision requires the Arbitral Tribunal to continue with the arbitral proceedings and make an arbitral award. Sub-section (6) of Section 16 stipulates that a party aggrieved by such an arbitral award may make an application for setting aside an award in accordance with Section 34 of the A&C Act.

5. It is in the light of the aforesaid provisions that the learned Single Judge has opined that once an application moved under Section 16 of the A&C Act is rejected, the party so aggrieved shall have to await the delivery of the award and only thereafter can the provisions of Section 34 of the A&C Act be invoked for setting aside the arbitral award. We are in complete agreement with the view expressed in the impugned order. The mandate of Section 16 of the A&C Act is crystal clear. Once the application filed by him under Section 16 of the A&C Act has been dismissed by the learned Sole Arbitrator, the appellant has no option but to wait for the Arbitral Tribunal to deliver an award and if aggrieved thereby, he will have an option to move an application in the High Court for setting aside the arbitral award in terms of Section 34 of the A&C Act. The said position was clarified by a

Constitution Bench of the Supreme Court in the landmark case of SBP & Co. vs. Patel Engineering Ltd. and Anr. reported as **(2005) 8 SCC 618**. In the aforesaid case, the Supreme Court was required to deliberate upon the nature of functions of the Chief Justice or his designate under Section 11 of the A&C Act. On a careful scrutiny of the provisions of the A&C Act, in a majority judgment authored by Justice P.K. Balasubramanyan, it was observed as follows:-

7.Chapter IV deals with the jurisdiction of Arbitral Tribunals. Section 16 deals with the competence of an Arbitral Tribunal, to rule on its jurisdiction. The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement. A person aggrieved by the rejection of his objection by the Tribunal on its jurisdiction or the other matters referred to in that section, has to wait until the award is made to challenge that decision in an appeal against the arbitral award itself in accordance with Section 34 of the Act. But an acceptance of the objection to jurisdiction or authority, could be challenged then and there, under Section 37 of the Act."

6. After distilling the earlier decisions rendered by it on the scope of the powers exercised by the Chief Justice of the High Court and the Chief Justice of India under Section 11(6) of the A&C Act, the Supreme Court summed up its discussion in para 47 of the captioned decision and declared that the said powers are not administrative in nature but are judicial powers. It was also observed that once a matter reaches the 'Arbitral Tribunal' or the 'Sole Arbitrator', the High Court would not interfere with the orders passed by the Arbitrator or the Arbitral Tribunal during the course of the arbitration

proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

7. Reliance placed by learned counsel for the appellant on the decision of the Supreme Court in the case of S.N. Prasad (supra) to urge that a writ petition is maintainable against an order passed by the Sole Arbitrator under Section 16 of the A&C Act is misplaced for the reason that the said matter had reached the Supreme court only after two arbitration awards had been made and delivered in favour of the first respondent therein and were challenged by the appellant before the High Court. The said challenge was repelled by the High Court by dismissing the applications moved under Section 34 of the A&C Act. Aggrieved thereby, the appellant had approached the Supreme Court. In the said case, the Supreme Court was called upon to decide the question as to whether a guarantor of a loan, who was not a party to the Loan Agreement containing the arbitration agreement executed between the lender and the borrower, could be made a party to the arbitral proceedings regarding disputes relating to non-payment of the subject loan. In the present case, admittedly, the arbitral proceedings are still ongoing. No award has been made so far. Therefore, the appellant has no option but to await delivery of the award and if aggrieved thereby, invoke the provisions of Section 34 of the A&C Act by filing an application.

8. As for the submission made by learned counsel for the appellant that the writ Court erred in refusing to exercise the jurisdiction vested in it under Article 226 of the Constitution of India, we are afraid, the decision in the case of Smt. Lila Vati Bai (supra) has no application to the facts of the present case. The said judgment is being quoted completely out of context

by ignoring the factual matrix of the said case where the appellant therein had filed a petition before the Supreme Court under Article 32 of the Constitution of India and had not only challenged the validity of an order of requisition, but had also challenged the vires of the Bombay Land Requisition Act, 1948. The appellant herein has not sought any relief against the State or its instrumentality for maintaining a petition under Article 226 of the Constitution of India. This is a dispute between private parties. Even otherwise, the mandate of Section 5 of the A&C Act, which is a non-obstante clause, is clear. It states in so many words that *“notwithstanding anything contained in any other law for the time being in force, in matters governed by the Act, no judicial authority shall intervene except where so provided.”* The underlying object of the said provision is to ensure that wherever parties have submitted their disputes to an Arbitral Tribunal in terms of the Arbitration Agreement, resolution of the said disputes ought to be expedited without any scope of judicial intervention that may end up delaying the proceedings inordinately. The said view has been reiterated by the Supreme Court and the High Courts in several decisions. In the case of Patel Engineering (supra), the Supreme Court held that:-

"5. Section 5 indicates the extent of judicial intervention. It says that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no judicial authority shall intervene except where so provided in Part I. The expression “judicial authority” is not defined. So, it has to be understood as taking in the courts or any other judicial fora.”

9. In view of the facts and circumstances mentioned above, the present appeal is dismissed in *limine* as meritless alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

JULY 03, 2019
Rkb/NA

